Supreme Court, U.S
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No. 01-667

IN THE
SUPREME COURT OF THE UNITED STATES

EDMOND N. GAUDELLI,
Petitioner,
v.

MILTON EISNER, WILLIAM CROWLEY, JAMES Y. GARRETT, LINDA L. KELLY, D. BROOKS SMITH, KEITH ALAN M. PESTO, EDWARD R. BECKER, SAMUEL A. ALITO, JR., THOMAS L. AMBRO, MARYANNE TRUMP BARRY, MORTON I. GREENBERG, CAROL LOS MANSMANN, THEODORE A. McKEE, RICHARD LOWELL NYGAARD, MARJORIE O. RENDELL, JANE R. ROTH, ANTHONY J. SCIRICA, DOLORES K. SLOVITER, RUGGERO J. ALDISERT, ROBERT E. COWEN, LEONARD I. GARTH, MAX ROSENN, WALTER K. STAPLETON, JOSEPH F. WEIS, JR., MARCIA WALDRON, and several unknown law clerks and staff attorneys,
Respondents.

On Petition For A Writ of Certiorari to the United States Court of Appeals For the Third Circuit

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the issues raised in the Petition for a Writ of Certiorari present a case or controversy required for this Court to exercise jurisdiction.

2. Whether the United States Court of Appeals for the Third Circuit erred in holding that the Petitioner's Complaint was properly dismissed on the grounds that claims for damages arising out of Petitioner's criminal conviction may not be maintained while the conviction stands.

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OPINIONS AND ORDERS BELOW

United States District Court for the Western District of Pennsylvania, Memorandum Order (CV-00-0437) entered March 30, 2001 granting defendants' motion to dismiss the plaintiff's complaint.

United States Court of Appeals for the Third Circuit, Judgment (No. 01-1926) entered July 26, 2001 summarily affirming the judgment of the District Court.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. §1254 which provides: "cases in the courts of appeals may be reviewed by the Supreme Court . . . (1) by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

STATEMENT OF THE CASE

This case arises from *pro se* petitioner, Edmund N. Gaudelli's ("Gaudelli") March 1996 conviction in the United States District Court for the Western District of Pennsylvania for conspiracy to defraud the United States and for making false statements to a grand jury. As a result of his conviction, Gaudelli was sentenced to a period of incarceration.

Respondent, Milton Eisner ("Eisner"), who had been Gaudelli's personal accountant, was called to testify as a witness for the United States during Gaudelli's criminal trial in the Western District of Pennsylvania. During direct examination on behalf of the United States, Eisner testified that he was familiar with Gaudelli's signature given that he had seen it before on tax returns and other documents and that the signature on Government Exhibit 702 appeared to be Gaudelli's signature. Based upon Eisner's authentication of this document and upon motion by the United States,

Government Exhibit 702 was entered into evidence.

Following his criminal conviction, Gaudelli, proceeding *pro se*, appealed the conviction to the United States Court of Appeals for the Third Circuit, claiming that it was based upon the perjured testimony of Eisner and a forged document entered into evidence as Government Exhibit 702. The United States Court of Appeals for the Third Circuit affirmed Gaudelli's conviction, finding no merit to these claims. See United States v. Gaudelli, C.A. No. 96-3514 (3rd Cir. February 13, 1998). Gaudelli also sought to challenge his conviction by filing a Motion to Vacate Sentence pursuant to 28 U.S.C. Section 2255 (95-CR-67-2), and a claim under the Federal Tort Claims Act pursuant to 28 U.S.C. Sections 2671-2680 (98-CV-1185).[1]

Gaudelli subsequently filed the subject civil action in the United States District Court for the Western District of Pennsylvania on March 3, 2000. Pet. App. 8a. This complaint raised claims against Eisner based on his in court testimony and his role in authenticating Government Exhibit 702. Gaudelli seeks compensatory damages in the amount of $3,000,000 as well as punitive damages from Eisner. Pet. App. 37a.

Gaudelli's complaint also raised claims against the defendants, William Crowley, an FBI agent involved in his criminal prosecution; James Y. Garrett, the assistant United States attorney who prosecuted him; Linda L. Kelly, also an assistant United States attorney; D. Brooks Smith, United States District Judge for the Western District of Pennsylvania;

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[1] Gaudelli's §2255 motion was denied by the United States District Court for the Western District of Pennsylvania. Gaudelli filed an application to the Third Circuit for a certificate of appealability to appeal the denial of his §2255 motion (C.A. No. 00-3429). Gaudelli's claims under the Federal Tort Claims Act were dismissed by the United States District Court for the Western District of Pennsylvania on May 6, 1999. The United States Court of Appeals for the Third Circuit affirmed the Order of the District Court on February 7, 2000. (C.A. No. 99-3413).

Keith A. Pesto, United States Magistrate Judge for the Western District of Pennsylvania; all judges, newly appointed, current and senior, of the United States Court of Appeals for the Third Circuit; Marcia Waldron, a Third Circuit Senior Staff Attorney; and "several unknown law clerks and staff attorneys," (hereinafter referred to as the "Federal Defendants"). The complaint alleges that Eisner and the Federal Defendants participated in a conspiracy to commit "fraud upon the Court," and violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. Section 1962. Gaudelli alleges that Eisner, FBI Agent Crowley and Assistant United States Attorney Garrett conspired to engineer his criminal conviction through the use of perjured testimony. Pet. App. 9a. Gaudelli also alleges in the complaint that the federal judges named as defendants engaged in a "cover up" and obstruction of justice conspiracy. Pet. App. 9a.

Thereafter, on April 4, 2000, Eisner filed a motion to dismiss Gaudelli's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Federal Defendants likewise filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). By Memorandum Order entered on March 30, 2001, the United States District Court for the Western District of Pennsylvania granted the defendants' motions to dismiss. Pet. App. 3a. With regard to Gaudelli's claims against Eisner, the District Court found that these claims were barred by the doctrine of collateral estoppel given that Gaudelli's contention that Government Exhibit 702 was a forgery and that Eisner testified falsely as to its authenticity was decided by the Third Circuit as part of Gaudelli's direct appeal of his conviction. Pet. App. 5a. The District Court reasoned that given that these issues were litigated and determined in a prior proceeding, Gaudelli could not raise them in a subsequent civil action. Pet. App. 5a. The District Court also noted that Gaudelli's civil suit was nothing more than an improper collateral attack on his criminal conviction. Pet. App. 6a. The District Court further

held that Gaudelli's complaint must be dismissed for lack of jurisdiction on the grounds that the only relief sought by Gaudelli against the Federal Defendants is in the nature of an advisory opinion.[2] Pet. App. 6a. The District Court granted the Federal Defendants' request for an injunction for the purpose of enjoining Gaudelli from filing any further claims which raised identical or similar issues against the Federal Defendants without prior permission of the District Court. Pet. App. 7a.

Gaudelli filed a timely appeal of the Order dismissing his complaint to the United States Court of Appeals for the Third Circuit. The Federal Defendants filed a Motion for Summary Affirmance of the District Court's Order. The Third Circuit summarily affirmed the Order of the District Court by *per curiam* Opinion entered July 26, 2001. Pet. App. 2a. The Third Circuit found that the District Court had properly dismissed Gaudelli's complaint on the grounds that under this Court's holding in Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994), Gaudelli's claims for damages arising out of his criminal conviction may not be brought while his conviction stands. The Third Circuit also found that to the extent Gaudelli's complaint seeks relief other than damages, such a collateral attack may only be addressed in a Section 2255 motion. Moreover, the Third Circuit found that Gaudelli's claims against the Federal Defendants were properly dismissed for lack of jurisdiction in that the only relief requested with regard to these defendants was in the form of an advisory opinion which is prohibited under Article

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[2] Gaudelli's complaint sought a declaration that "he, as a *pro se* litigant, is entitled to the same consideration in adjudication of his actions as any lawyer from a 'blue chip' law firm;" and that "the practice of allowing law clerks and/or staff attorneys to do any research or draft any opinion or part thereof in either the district or appellate courts be declared unconstitutional;" and that "the practice of ruling on appellate and other briefs that have not been read by the judges of deciding panel, much less considered carefully or the proper legal standards applied, be declared a felony . . ." Pet. App. 37(a)

III, Section II of the Constitution of the United States.[3]

Gaudelli subsequently filed the subject Petition for a Writ of Certiorari on October 22, 2001. Gaudelli presents the following questions for consideration by this Court:

I. May law clerks engage in the judicial function unknown to the litigant?

II. Do *pro se* litigants have the same right of meaningful access to the courts as do lawyers from "blue chip" law firms?

III. Is there in fact a remedy for every right denied?

Clearly, the issues presented by the Petition establish that Gaudelli seeks only an advisory opinion and is not challenging the District Court's dismissal of his claims against Eisner. For this reason, and for the reasons more fully set forth below, this Court should deny the Petition for a Writ of Certiorari.

STANDARD OF REVIEW

An Order dismissing a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure is reviewed de novo. Help at Home, Inc. v. Medical Capital, L.L.C., 260 F.3d 748 (3rd Cir. 2000). The Court must accept as true and draw all reasonable inferences in favor of the plaintiff. Id. The dismissal must be affirmed where it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. Id., *citing*, Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99 (1957).

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[3] The Third Circuit upheld the District Court's Order enjoining Gaudelli from relitigating the same claims against the Federal Defendants.

ARGUMENT

A. The Petition Seeks an Advisory Opinion and Fails to Present a Compelling Reason for Review

This Court's review is not justified because as the Petition merely requests an advisory opinion from this Court. Gaudelli's Petition establishes that he is seeking a declaration from this Court that "law clerks may not engage in usurping the duties of Article III Judges who have been confirmed by Congress to perform those duties" and that "*pro se* litigants should have the same right of meaningful access to the courts as to lawyers from 'blue chip' law firms." However, it is well settled that this Court may not enter advisory opinions pursuant to Article III, Section II of the Constitution of the United States. Pursuant to this provision, the jurisdiction of this Court is limited to actual "cases" and "controversies." This constitutional provision operates as a direct prohibition on the issuance of advisory opinions by the federal courts. See Rhone-Poulenc Surfactants and Specialties, L.P. v. C.I.R., 249 F.3d 175, 181-182 (3rd Cir. 2001). In order for an action to satisfy this case or controversy requirement, it must present "(1) a legal controversy that is real and not hypothetical, (2) a legal controversy that affects an individual in a concrete manner so as to provide the factual predicate for reasoned adjudication, and (3) a legal controversy so as to sharpen the issues for judicial resolution." Id., *quoting*, Travelers Ins. Co. v. Obusek, 72 F.3d 1148 (3rd Cir. 1995), *quoting*, Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 411 (3rd Cir. 1992)

The issues presented in Gaudelli's Petition do not present a legal controversy which would satisfy the jurisdictional requirements of Article III, Section II of the Constitution of the United States. Rather, Gaudelli's Petition as well as the complaint filed in the United States District Court for the Western District of Pennsylvania represent

Gaudelli's disagreement with the federal courts' practice of having law clerks and staff attorneys rather than Article III judges decide cases. In particular, Gaudelli challenges this practice as it relates to *pro se* litigants as it allegedly deprives these litigants of meaningful access to the courts. Given that Gaudelli's Petition requests this Court to examine the role of law clerks and staff attorneys in the federal judiciary and not the claims raised against Eisner, his Petition fails to present a legal controversy which would satisfy this Court's jurisdictional requirements.

Moreover, Gaudelli's Petition for a Writ of Certiorari presents no significant issue justifying review of the judgment of the Third Circuit Court of Appeals by this Court. It is well settled that upon petition for a writ of certiorari, this Court's review is a matter of judicial discretion, not of right. Supreme Court Rule 10. Moreover, this Court will grant review only for "compelling reasons." Id. The reasons this Court may find compelling include, but are not limited to, a conflict of decisions between the United States courts of appeals; a conflicting decision between a United States court of appeals and a state court of last resort; a decision by a state court of last resort which conflicts with that of another state court of last resort or a United States court of appeals; or a decision by a state court or a United States court of appeals on an important question of federal law that has not been settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions of this court. Supreme Court Rule 10(a)-(c). Moreover, a petition for a writ of certiorari will rarely be granted based on a petitioner's contention that the lower court erred in its findings of fact or application of the law. Id.

Clearly, in this case, Gaudelli has failed to present a compelling reason justifying this Court's review of the dismissal of his complaint. In fact, Gaudelli's Petition fails to even challenge the legal conclusions of the courts below.

Rather, Gaudelli presents to this Court questions regarding the constitutionality of judicial law clerks' role in researching and drafting opinions of the court, and whether *pro se* litigants under this system have meaningful access to the courts.

B. Gaudelli's Claims Against Eisner For Damages May Not Be Maintained Given That His Conviction Has Been Upheld

Apart from the lack of a legal controversy in the Petition, Gaudelli's claims against Eisner are foreclosed by virtue of his criminal conviction. The question presented in Gaudelli's criminal conviction in the District Court for the Western District of Pennsylvania was upheld on direct appeal to the United States Court of Appeals for the Third Circuit. Moreover, Gaudelli's attempts to challenge his conviction pursuant to Section 2255 have also been unsuccessful. As noted by both the District Court and the Third Circuit, Gaudelli's claims against Eisner stem solely from Eisner's role as a witness against Gaudelli on behalf of the United States, and in particular, Eisner's testimony regarding the allegedly forged document admitted as Government Exhibit 702 which Gaudelli contends was the basis for his criminal conviction.

This Court's decision in Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364 (1994), provides considerable guidance in the case at bar. In Heck, this Court was presented with the question of whether a petitioner could challenge the constitutionality of his conviction in a suit for damages brought pursuant to 42 U.S.C. Section 1983. In that case, the petitioner filed suit claiming that the respondents, the prosecutors and an investigator with the state police, had engaged in unlawful acts that had led to his arrest and conviction. 512 U.S. at 479. The Heck Court found that petitioner's claims essentially represented a challenge to the legality of his conviction. This Court reasoned that

petitioner's claims were most analogous to the common law cause of action for malicious prosecution, and that in order to successfully maintain a claim for malicious prosecution, the plaintiff must establish that the criminal proceeding terminated in favor of the accused. Id. at 484. The Court in Heck reasoned that the policy underlying this requirement in a malicious prosecution claim should apply with equal force and effect to a claim for monetary damages arising out of plaintiff's criminal conviction and brought pursuant to Section 1983, and thus, the plaintiff must establish the unlawfulness of his conviction or confinement before a claim for monetary damages may be maintained. Id. at 484-485. Accordingly, the Court held that:

> in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

Id. at 487. Thus, when faced with a situation where the plaintiff seeks monetary damages in relation to a criminal conviction, the Court must determine whether a judgment in favor of the plaintiff would necessarily imply the invalidity of the conviction. If it would, according to the Court in Heck, the complaint must be dismissed absent a showing by the plaintiff that the conviction has been invalidated. Id.

Applying these principles to the instant case, it is clear that Gaudelli's claim against Eisner and the Federal

Defendants is essentially that these defendants conspired to bring about his criminal conviction through the use of an allegedly forged document and Eisner's allegedly false testimony. Gaudelli seeks monetary damages from Eisner based on his role in bringing about his criminal conviction. However, under this Court's decision in Heck, Gaudelli may not maintain his claim for monetary damages against Eisner in the absence of a showing that his criminal conviction has been overturned. In this case, despite Gaudelli's numerous attempts to have his conviction overturned on the basis of this allegedly forged document, these attempts have been unsuccessful and his conviction stands. As stated above, Gaudelli's conviction was upheld on direct appeal by the Third Circuit and his Section 2255 motion has been denied. Accordingly, Gaudelli may not maintain his civil claims for monetary damages against Eisner. Therefore, the decision of the Third Circuit Court of Appeals upholding the dismissal of Gaudelli's claims against Eisner was proper.

C. Gaudelli's Claims Are Barred by the Doctrine of Collateral Estoppel

Moreover, the dismissal of Gaudelli's claims against Eisner was also proper under the doctrine of collateral estoppel. It is well settled that when a party has had a full opportunity to litigate an issue and that issue has been determined against that party, the doctrine of collateral estoppel bars relitigation of this fact or issue. See Ash v. Swensen, 397 U.S. 436 (1970). Collateral estoppel applies where the following four elements exist:

> (1) An issue decided in a prior action is identical to one presented in a later action; (2) The prior action resulted in a final judgment on the merits; (3) The party against whom collateral estoppel is asserted was a party to the prior action,...; and (4) The party against whom collateral estoppel is asserted

> had a full and fair opportunity to litigate the issue in the prior action.

Jones v. United Parcel Service, 214 F.3d 402, 405 (3rd Cir. 2000) *citing* Rue v. K-Mart Corp., 713 A.2d 82, 84 (Pa. 1998)).

The gravamen of the plaintiff's claim against Eisner is that the signature on Government Exhibit 702 entered into evidence against him in the criminal trial was a forgery, and that Eisner falsely testified as to the document's authenticity during trial. This precise issue was addressed in several decisions involving Gaudelli's criminal conviction. First, and most important, the issue of whether Government Exhibit 702 was authentic was decided by the Court during Gaudelli's criminal trial. At his trial, Gaudelli had adequate opportunity to challenge its authenticity. Likewise, Gaudelli had every opportunity through cross-examination to challenge the veracity of Eisner's testimony at the trial. Further, the criminal trial resulted in a final judgment on the merits.

Moreover, as noted by the District Court, the Third Circuit directly addressed this issue when Gaudelli challenged his criminal conviction on the grounds that his conviction was based on the alleged perjured testimony of Eisner and a forged document. See United States v. Gaudelli, C.A. No. 96-3514. In affirming Gaudelli's criminal conviction, the Court of Appeals stated ". . . the record before us is completely lacking of any proof that Eisner's testimony was false or that Government Exhibit 702 was not authentic." (footnote omitted) Id. at 3.

As Gaudelli had a full and fair opportunity to litigate the authenticity of his signature on Government Exhibit 702 as well as Eisner's credibility as a witness at the criminal trial, the claims raised by Gaudelli against Eisner in the subject civil action are barred by the doctrine of collateral estoppel. As such, the judgment of the Third Circuit upholding the dismissal of Gaudelli's claims against Eisner was proper.

D. Gaudelli Fails To State a Claim Against Eisner Upon Which Relief Could Be Granted

Finally, wholly apart from the effect of collateral estoppel, Gaudelli's complaint was properly dismissed as it fails to state a claim against Eisner upon which relief may be granted. Gaudelli's claims against Eisner are based purely on his role as a witness called by the government to testify at Gaudelli's criminal trial. However, given that these claims are predicated on Eisner's in-court testimony at the criminal trial, any claims against Eisner are barred by the witness immunity doctrine. See Briscoe v. Lattue, 460 U.S. 325, 103 S.Ct. 1108 (1983). Gaudelli does not allege any other improper, unlawful or otherwise actionable conduct on the part of Eisner. Therefore, as Eisner is immune from liability as to the only allegedly wrongful conduct alleged in Gaudelli's complaint there is no claim against Eisner upon which relief could be granted. Accordingly, the decision of the Third Circuit affirming the dismissal of Gaudelli's complaint was proper.

CONCLUSION

For the reasons set forth above, Respondent, Milton Eisner, requests this Court to deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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Dated: November 21, 2001